

MINUTES

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Monday, November 3, 2003

Division Two

**A101332 -- Steven Eric Walker, et al. v. State of California.**

By the Court: The petition for rehearing is denied. Kline, P.J.

Division Five

**A099678 -- The People v. Alan Cianci.**

The order imposing victim restitution is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A104071 -- PC-Doctor, Inc. v. The Superior Court of Alameda County; S. Bruce Pincus, R.P.I.**

The Court:\* Accordingly, we conclude that respondent superior court initially erred in failing to hold a hearing on petitioner's motion for relief from dismissal, and then compounded that error when it refused to grant relief from dismissal on due process grounds. We previously advised the parties that we might issue a peremptory writ in the first instance. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 cal.3d 171, 177-180.) The petition is unopposed, petitioner's right to relief is obvious, and no useful purpose would be served by issuance of an alternative writ, further briefing and oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241.) Therefore, let a peremptory writ of mandate issue commanding respondent superior court to set aside and vacate its August 18, 2003, order denying petitioner's motion to set aside the dismissal of its small claims appeal, and to enter a new and different order granting that motion and scheduling further proceedings on petitioner's appeal. This decision shall be final as to this court within five days. (Cal. Rules of Court, rule 24(b)(3).) Petitioner shall recover the costs it incurred in this writ proceeding. (Cal. Rules of Court, rule 56.4(a).) (Not for Publication.)

\*Before Jones, P.J., Stevens, J., and Gemello, J.

Tuesday, November 4, 2003

Division Two

**A099914 -- In re Retirement Cases. JCCP No. 4049.**

The order on attorney fees is vacated as to CB&M and the matter is remanded for proceedings consistent with this opinion. The order of attorney fees as to SH&S, RKI, and FFB is affirmed. The portion of the order denying an award of fees pursuant to a common fund theory is affirmed. No party is awarded costs. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, November 4, 2003

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J. and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

A096347      Marlene Palacio et al.  
A097583      v.

Longs Drug Stores California, Inc.  
Causes called. Robert D. Easa argued for appellant Longs Drug Stores. Mary Shea argued for respondents. Causes submitted.

At this point the Court reconstituted itself to include Kay, P.J., Sepulveda, J. and Rivera, J.

A100260      People  
v.

Jerome Earl Beck  
Cause called. David Martin argued for appellant Beck. Kelly Croxton argued for respondent. Cause submitted.

A101841      A.I. Credit Corporation, Inc.  
v.

Aguilar & Sebastinelli  
Cause called. Allen J. Kent argued for appellant Aguilar & Sebastinelli. Anne Fortune Wickers argued for respondent. Cause submitted.

A100054      David Dezerega et al.  
A100583      v.

City of Berkeley Rent Stabilization Board  
Causes called. David J. Beauvais argued for real party in interest Jason Meggs. Fred Feller argued for respondents Dezerega et al. Causes submitted.

The court adjourned at 11:07 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, November 4, 2003

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

A099293     People  
              v.  
              Barney McClendon  
Cause called. Kathleen Kahn argued for appellant McClendon. Pamela B. Hooley argued for respondent. Cause submitted.

A102122     In re the Marriage of Ojo.  
              Geoffrey Ojo  
              v.  
              Candice Ojo  
Cause called. In pro per appellant did not appear because appellant had earlier waived oral argument. In pro per Candice Ojo teleargued. Cause submitted.

At this point the Court reconstituted itself to include Kay, P.J., Reardon, J., and Rivera, J.

A098044     David Taylor et al.  
A098587     v.  
              John Crane, Inc.  
Causes called. Philip S. Ward argued for appellant John Crane , Inc. Daniel Smith argued for respondents. Causes submitted.

The Court adjourned at 3:04 p.m.

Tuesday, November 4, 2003 (continued)

Division Five

**A099429 -- Alameda Belt Line v. The City of Alameda.**

The order granting summary judgment and the judgment itself are vacated. The matter is remanded for further proceedings consistent with this opinion. The City shall recover its costs on appeal. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A100608 -- In re the Marriage of Lynn and David A. Spector.**

The orders of the trial court are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Wednesday, November 5, 2003

Division Three

**A094701 -- The People v. Lee Snyder.**

By the Court: Appellant's petition for rehearing is denied. McGuiness,

P.J.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, November 5, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Corrigan, J., Pollak, J., and I. Calanoc, Deputy Clerk.

A097435 Insurance Commissioner of the  
State of California,  
v.  
Golden Eagle Insurance Company,  
Scott Cade.  
Cause called and argued by Timothy Gonzales, counsel for appellant, and  
Richard Derevan, counsel for respondent. Cause ordered submitted.

A098028 The People,  
v.  
Peter Quincy Rogers.  
Cause called and argued by Michael Kluk, counsel for appellant, and  
Christopher Wei, counsel for respondent. Cause ordered submitted.

A097690 Bay Area Luxury Homes/Stevick I,  
v.  
William L. Lee III, et al.  
Cause called and argued by Joseph Bochner, counsel for appellant, and  
Kevin Kelly, counsel for respondent. Cause ordered submitted.

A098667 Bay Area Luxury Homes/Stevick I,  
v.  
William L. Lee III, et al.  
Cause called and argued by Joseph Bochner, counsel for appellant, and  
Kevin Kelly, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Thursday, November 6, 2003

Division Two

**A100905 -- In re Crystal G. et al., Persons Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. George G.**

The juvenile court's orders are affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Division Four

**A098221 -- The People v. Cheo Pou Saechao.**

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)



Friday, November 07, 2003

Division One

**A102733 -- In re Joseph L., a Person Coming Under the Juvenile Court Law. The People v. Joseph L.**

The orders adjudicating appellant a continued ward of the court and placing him outside the parental home are affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A100717 -- The People v. Michael J. Connelly.**

**A102171 -- In re Michael J. Connelly on Habeas Corpus.**

The order denying appellant's petition is affirmed and his petition to this court for the issuance of a writ of mandate, habeas corpus or *coram vobis* is denied. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A101240 -- Gayle Hart et al. v. Niambi Lincoln.**

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A100824 -- The People v. Michael Brandon Jaco.**

The order denying the motion to suppress is reversed, and the case is remanded to the trial court in order to allow appellant an opportunity to withdraw his plea of "no contest." Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A101018 -- Albertine Omani et al. v. Montie S. Day.**

The judgment is affirmed. Costs on appeal are awarded to plaintiffs. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Friday, November 07, 2003 (continued)

**A100628 -- Gerald R. Otto v. State of California, et al.**

By the Court: Appellant having filed a request for dismissal in this court, the appeal is dismissed. The remittitur shall issue forthwith. Kline, P.J.

**A103405 -- Pacific Gas & Electric Co. v. Michael L. Balhorn, et al.**

By the Court: Appellant's motion to vacate the dismissal is granted and the appeal in the above-entitled case is restored to active status in this court. Time for filing appellant's opening brief is extended to December 1, 2003. Kline, P.J.

Division Four

**A103948 -- A.P. v. The Superior Court of Alameda County; Alameda County Social Services Agency, R.P.I.**

The petition is denied on the merits. (Cal. Rules of Court, rule 39.1B(o).) This opinion is final immediately as to this court. (Cal. Rules of Court, rule 24(b)(3).) Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A102122 -- In re the Marriage of Candice and Geoffrey OJO.**

The trial court's order setting child support after taking into account appellant's new mate income is reversed. The case is remanded for further proceedings consistent with this opinion. The purported appeal from the interlocutory custody/visitation order is dismissed. Each party to bear his or her own costs and fees on appeal. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Friday, November 07, 2003 (continued)

**A096347, A097583 -- Marlena Palacio et al. v. Longs Drug Stores California, Inc.**

The judgment is affirmed except as to the judgment against Longs for intentional infliction of emotional distress. The matter is remanded for entry of judgment in favor of Longs and recalculation of costs under Code of Civil Procedure section 1032. The post judgment award of attorney fees under Labor Code section 218.5 is affirmed. The parties shall bear their own costs and attorney fees incurred on appeal. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A101690 -- In re Michael S., a Person Coming Under the Juvenile Court Law. The People v. Michael S.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A100929 -- The People v. Kristen Michael Allen Tice.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A101464 -- The People v. George Vernon Townsend.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Division Five

**A102173 -- In re Roosevelt L., Jr., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Roosevelt L., Sr.**

The order is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Monday, November 10, 2003

Division Two

**A101353 -- Teddy Attell v. Howard Blum.**

The order appealed from is affirmed. Haerle, Acting P.J. We Concur:  
Lambden, J., Ruvolo, J. (Not for Publication.)

**A096451 -- Stephen J. Barrett, et al. v. Hulda Clark, et al.**

By the Court: Appellant's petition for rehearing is denied. Respondent's  
petition for rehearing is granted. Kline, P.J.

Wednesday, November 12, 2003

Division Two

**A100659 -- The People v. Jerry Mark Stewart.**

The judgment is reversed. The case is remanded to the superior court to vacate appellant's plea of no contest if he makes an appropriate motion within 30 days after this opinion becomes final. If appellant files such motion, the superior court shall vacate the plea, reinstate the original charges contained in the information if the People so move, conduct a hearing on the constitutionality of the search at issue, and proceed accordingly. If appellant does not move to vacate, the superior court shall reinstate the judgment. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Certified for Publication.)

Division Three

**A097690 -- Bay Area Luxury Homes/Stevick I, LLC v. William L. Lee III, et al.**

The judgment entered in favor of respondents upon their motion pursuant to Code of Civil Procedure section 631.8 is affirmed. Appellant shall pay respondents' costs on this appeal. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A098667 -- Bay Area Luxury Homes/Stevick I, LLC v. William L. Lee III, et al.**

The order awarding attorney fees to respondents is affirmed. Appellant shall pay respondents' costs incurred on this appeal. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Thursday, November 13, 2003

Division Two

**A103133 -- The People v. David Douglas Herold.**

The order permanently revoking appellant's probation is affirmed.  
Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Four

**A101135 -- Maria Buenrostro v. Guckenheimer Enterprises.**

The judgment is reversed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A104227 -- Gray Davis, as Governor, etc. v. The Superior Court of Marin County; Stephen O'Connell, R.P.I.**

The court:\* We now make explicit what was implicit in this court's prior order granting the Governor's petition for writ of supersedeas: Real party in interest Stephen O'Connell shall remain in the custody of the California Department of Corrections pending the resolution of the appeal in *In re Stephen O'Connell*, A102980. Let a peremptory writ of mandate issue directing the superior court to vacate its order of October 9, 2003, which directed the California Department of Corrections to release O'Connell on his own recognizance. O'Connell shall remain in the custody of the Department of Corrections pending the resolution of appeal A102980.

\*Kay, P.J., Reardon, J., Rivera, J. (Not for Publication.)

**A101775 -- In re Taylor M., a Person Coming Under the Juvenile Court Law. Solano County Department of Health and Social Services v. Andrew M.**

The order of the juvenile court finding reasonable reunification services were provided is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Thursday, November 13, 2003 (continued)

**A104082 -- M.C. v. The Superior Court of Lake County; Lake County Department of Social Services, R.P.I.**

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (1); Cal. Rules of Court, rule 39.1A(b)(2).) Our decision is final in this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A099191, A099293 -- In re Barney McClendon, on Habeas Corpus.**

The superior court order granting petitioner Barney McClendon's petition for a writ of habeas corpus and ordering his release from prison is reversed. This court's order dated September 3, 2002, staying petitioner's release from prison, shall dissolve upon issuance of the remittitur. This court's order, dated December 26, 2002, staying a scheduled parole suitability hearing, shall dissolve upon issuance of the remittitur. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Certified for Publication.)

Division Five

**A104006 -- The People v. Arzelia Faye McCracklin.**

By the Court: The court having been notified of appellant's death on September 7, 2003, as verified by a copy of her death certificate, all proceedings in the cause have permanently abated. The superior court having previously entered an order to this effect, the appeal is hereby dismissed. (See *In re Jackson* (1985) 39 Cal.3d 464, 480; *People v. Dail* (1943) 22 Cal.2d 642, 659.) Jones, P.J.

**A101530 -- The People v. Jack Dale Sovereign.**

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

Friday, November 14, 2003

Division One

**A103635 -- Oregon's Wild Harvest v. The Superior Court of San Francisco County, Aaron Ganir, R.P.I.**

The superior court erred when it denied the motion to quash service of summons. (*Fisher Governor Co. v. Superior Court* (1959) 53 Cal.2d 222, 223-225.) Therefore, let a peremptory writ of mandate issue, commanding respondent, San Francisco County Superior Court, to vacate that portion of its order of August 1, 2003 denying the motion to quash service of summons of Oregon's Wild Harvest, and to instead grant the motion to quash service of summons. The stay previously imposed shall remain in effect until issuance of the remittitur. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A101078 -- In re Jacqueline T. et al., Persons Coming Under the Juvenile Court Law. Solano County Department of Social Services v. Jeanette T.**

The jurisdictional and dispositional orders are affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A098187 -- The People v. Antonio Vasquez.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

**A099108 -- Executive Direction, Inc. v. Chubb Group of Insurance Companies et al.**

The judgment is affirmed. Costs on appeal are awarded to Federal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)



Friday, November 14, 2003 (continued)

**A097955 -- Frank G. Frisella et al. v. Stanley L. Vistica et al.**

**A098272 -- Frank G. Frisella et al. v. Stanley L. Vistica et al.**

The judgment is affirmed. Neither party is awarded costs. Lambden, J.  
We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A102452 -- The People v. Timothy Lopez.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J.,  
Ruvolo, J. (Not for Publication.)

**A101079 -- West Bay Builders, Inc. v. NWD, Inc.**

The judgment is affirmed. Costs are awarded to West Bay. Lambden, J.  
We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A095846 -- Yvette Munoz, et al. v. City of Union City, et al.**

By the Court: Due to novelty and complexity of the issues presented, the court has concluded that additional time is required for full consideration of this appeal, therefore submission of the above-entitled cause is vacated and it is hereby ordered resubmitted for a period of not to exceed ninety days. Kline, P.J.

#### Division Four

**A100054, A100583 -- David DeZerega et al. v. City of Berkeley Rent Stabilization Board; Jason Meggs, R.P.I.**

In No. A100054, the judgment issuing a writ of mandate is affirmed. In No. A100583, the order awarding attorney fees is reversed. Each side will bear its own costs on appeal in both matters. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Friday, November 14, 2003 (continued)

Division Five

**A100555 -- Edward Elio Galante v. Ronnie Jacaranda Summerfield.**

The order filed October 29, 2002, enforcing the registered Zimbabwe custody decree of February 2002 is reversed. Costs on appeal are awarded to appellant. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A100735 -- In re the Marriage of Ronnie Jacaranda and Edward Elio Galante.**

The order of dismissal is reversed. Costs on appeal are awarded to appellant. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, November 17, 2003

Division One

**A102124 -- Rainer Genschel v. Dennis J. Breen.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A103440 -- The People v. Johanna Melissa Martinez.**

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A103157 -- The People v. Kimber-Lee J. Howard.**

The order revoking and then reinstating appellant's probation under modified terms is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Two

**A103891 -- Silvia H. Vanegas v. Antoine Gomis.**

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extension of time, and having failed to apply for relief from default, the appeal filed on August 28, 2003 is dismissed. (See Cal. Rules of Court, rule 8(b).) Kline, P.J.

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Monday, November 17, 2003

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Ruvolo, J. and Imelda Santos, Deputy Clerk.

At this point in the proceedings, Presiding Justice Kline announced that the panel for the first case on calendar would be Justices Haerle, Ruvolo and himself and the panel for the remaining cases would be Justices Haerle, Lambden and Ruvolo.

- A103840 Kathleen W.,  
v.  
The Superior Court;  
Social Services Agency et al., RPI.  
Cause called and argued by Margaret Pendergast, counsel for appellant, and Ellen Forman, counsel for real party in interest. Cause ordered submitted.
- A101597/  
A101001 Lemke Construction, Inc.,  
v.  
Lawrence A. Daly.  
Cause called and argued by Lawrence Cantwell, counsel for appellant, and Roger Brothers, counsel for respondent. Cause ordered submitted.
- A099196 Janet C. Campbell,  
v.  
Fireside Thrift Company.  
Cause called and argued by Myron Moskovitz, counsel for appellant, and Jan Chilton and Kim Card, counsels for respondents.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, J. and I. Santos, Deputy Clerk.

A097894     The People,  
                 v.  
                 Dionka Patrice Cook.  
Cause called and argued by Fred T. Uebbing, counsel for appellant, via teleconference, and Dorian Jung, Deputy Attorney General, counsel for respondent.

A100174     Victor Trinchese et al.,  
                 v.  
                 Pirelli Power Cables and Systems USA.  
Cause called and argued by Bryce Anderson, counsel for appellant, and Thomas Nicholas Charchut, counsel for respondent. Cause ordered submitted.

Court Adjourned.

Monday, November 17, 2003 (continued)

Division Three

**A100849 -- In re Richard G., et al, Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services v. David G.**

The order of September 20, 2002, terminating parental rights is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A101212 -- Michael A. Waul v. American Airlines, Inc.**

The judgment is affirmed. Defendant shall recover its costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

**A103511 -- In re Felix M., a Person Coming Under the Juvenile Court Law. The People v. Felix M.**

The juvenile court order is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Division Five

**A102428 -- The People v. Gregory Bartley.**

The order revoking appellant's probation is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

Tuesday, November 18, 2003

Division One

**A101282 -- The People v. Albert Bernard Bell.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A098004 -- The People v. Derald Ray Fagley.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A101045 -- In re Surgical Sutures cases II. JCCP No. 4148**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A100063 and A100656 -- Kent Harvey v. California Coastal Commission, et al.**

By the Court: It is ordered that the opinion filed herein on October 30, 2003, be modified as follows: (See order.) This modification does not effect a change in the judgment. The request for publication submitted by the County Counsel for the County of San Mateo is denied. Haerle, Acting P.J. (Not for Publication.)

Tuesday, November 18, 2003 (continued)

**A103840 & A103841 -- In re T. et al., Persons Coming Under the Juvenile Court Law. Kathleen W. et al. v. San Francisco Superior Court; San Francisco Department of Human Services, R.P.I.**

The orders taking jurisdiction, terminating reunification services, and setting a selection and implementation hearing (§ 366.26 hearing) were supported by the substantial evidence. The petitions for extraordinary relief are denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 893-895 [written opinion on petition for extraordinary relief precludes further challenge to orders by petitioner in any subsequent appeal].) Because the section 366.26 hearing is set for December 17, 2003, our opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(b)(3). Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A102586 -- In re Robert G., a Person Coming Under the Juvenile Court Law. The People v. Robert G.**

The dispositional order is modified to reflect a four year maximum term of confinement. As so modified, the order is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

**A102160 -- The People v. James Lee Hornsby.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A098688 -- Carol Price v. Heller Ehrman White & McAuliffe et al.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.



Tuesday, November 18, 2003 (continued)

**A102043 -- In re Mary S., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. William S.**

The juvenile court's order is reversed. The matter is remanded for the limited purpose of seeking compliance with the notification provisions of the ICWA. If the court determines that proper notice has been provided, and no tribe asserts its rights under the Act, the court shall reinstate its order terminating parental rights. If a tribe does assert its rights, the court shall proceed according to the dictates of the ICWA. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A102751 -- Steve Baughman v. Li Wei Zhu.**

The purported appeal is dismissed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

**A101900 -- The People v. Toni Denise Jefferson.**

We remand for the trial court to either hold a hearing on defendant's ability to pay, or take a knowing and intelligent waiver from defendant to her right to such a hearing. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A100423 -- The People v. Clarence Nathan Hensel.**

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

**A100115 -- The People v. Noel Pritchett.**

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Wednesday, November 19, 2003

Division One

**A101901 -- The People v. Gloria Ann Jackson-Wagner.**

The judgment is modified to strike the \$200 restitution fine imposed when defendant's probation was revoked, and as so modified the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A101771 -- The People v. Robert Earl Hawkins.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A103720 -- Mirna C. v. San Francisco Superior Court; San Francisco Department of Human Services, R.P.I.**

The petition is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [subsequent challenges by appeal barred]; § 366.26 subd. (1)(1).) Given the nearness of December 17 hearing, our decision is final as to this court immediately (rule 24(b)(3)). Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A101001 & A101597 -- Lemke Construction, Inc. v. Lawrence W. Daly.**

The judgment regarding Daly is reversed and remanded for further proceedings in accordance with the views expressed herein. Daly is awarded costs. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Two

**A099350 -- The People v. Michael Frank Flores.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Wednesday, November 19, 2003 (continued)

**A096385 -- The People v. Todd Dwayne Pickens.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

**A103777 -- Pacific Region of Open Bible Standard Churches v. The Superior Court of Contra Costa County; Concord Christian Center et al., R.P.I.**

Let a peremptory writ of mandate issue directing respondent court to modify its order of August 13, 2003, and provide that enforcement of the judgment shall not be stayed pending resolution of the appeal unless real parties in interest given an undertaking in an amount to be fixed by the trial court pursuant to sections 917.2 and 917.4. In order to prevent frustration of the relief granted, and due to the need for a speedy resolution of this issue, our decision is final immediately as to this court. (Cal. rules of Court, rule 24(b)(3).) Petitioner shall recover the costs it incurred in this writ proceeding. (Cal. Rules of Court, rule 56.4(a).) McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

**A100668 -- Mark Borsuk, et al. v. Keith Ryan, et al.**

By the Court: Appellants' petition for rehearing is denied. McGuiness, P.J.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, November 19, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Corrigan, J., Pollak, J., and I. Calanoc, Deputy Clerk.

A101742 The People,  
v.  
Christopher Michael Parra.  
Cause called and argued by David Martin, counsel for appellant, and Sharon Wooden, counsel for respondent. Cause ordered submitted.

A098183 The People,  
v.  
Louis Ray Watson.  
Cause called and argued by James Bradley O'Connell, counsel for appellant, and Lisa Ashley Ott, counsel for respondent. Cause ordered submitted.

A098625 Cal Morken,  
v.  
Dolores Davidson.  
Parrilli, J. approached the bench and McGuiness, P.J. announced that the panel for this case is comprised of McGuiness, P.J., Parrilli, J. and Pollak, J. Cause called and argued by John Halley, counsel for appellant, and Norman Reitz, counsel for respondent. Cause ordered submitted.

A100627 Jim L. Woodson,  
v.  
Legacy Partners 2323 L.P., et al.  
The panel for this case is comprised of McGuiness, P.J., Parrilli, J., and Pollak, J. Cause called and argued by Jeffrey P. Widman, counsel for appellant, and Jonathan Cox, counsel for respondents. Cause ordered submitted. Pollak, J. left the bench.

A095527 The People,

v.

Keelon Jenkins et al.

The panel is now comprised of McGuiness, P.J., Corrigan, J. and Parrilli, J., Cause called and argued by Cynthia Thomas (counsel for appellant Jenkins), Juliana Drous (counsel for appellant McDaniels), and John Vance, counsel for respondent. Cause ordered submitted.

A100108 John Purcell et al.,

v.

Guinness UDV North America, Inc.

Cause called and argued by David Polin, counsel for appellants, and Carl Ruprecht, counsel for respondent. Cause ordered submitted. McGuiness, P.J. left the bench and Pollak, J. approached the bench.

A102092 David Aviel,

v.

California State University, Hayward, et al.

The panel is now comprised of Corrigan, J., Parrilli, J. and Pollak, J. Cause called and argued by appellant pro per David Aviel, and Paul T. Hammerness, counsel for respondents. Cause ordered submitted.

A098796 Annette LeRoy et al,

A099069 v.

A099464 Borel Private Bank & Trust Company.

Cause called and argued by James Walsh and Victoria Maroulis, counsel for appellants, and Walter Johnson, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Wednesday, November 19, 2003 (continued)

Division Four

**A100190 -- The People v. Joseph DiMarco.**

The judgment of conviction is affirmed. Sepulveda, J. We Concur:  
Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Thursday, November 20, 2003

Division One

**A101661 -- Theresa Hoover v. Rita Saenz.**

The orders denying the petitions for mandate are affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A104368 -- Latrell Sprewell v. The Superior Court of Alameda County; Gulalai Rahimi, R.P.I.**

The Court:\* Therefore, let a peremptory writ of prohibition issue, commanding respondent, Alameda County superior Court in Rahimi v. Sprewell (No. 2002058511) to take no further action in the case while arbitration is pending, other than to vacate its order setting the matter for trial. This case is final as to this Court immediately. (Cal. rules of Court, rule 24(b)(3).) The stay previously imposed shall remain in effect until the remittitur issues. (Not for Publication.)

\*Before Marchiano, P.J., Stein, J., and Margulies, J.

Division Two

**A097402 -- Cameron Kimbark et al. v. Metal Deck Specialists, Inc.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A103338 -- Virginia-Zulema Corporation, et al. v. State Department of Health Services, Division of Environmental and Occupational Disease Control, Occupational Health Branch, et al.**

By the Court: Appellant filed a request for dismissal in this court, the appeal is dismissed as to respondents Medical Board of California and Karin Fetherston only. Kline, P.J.

Thursday, November 20, 2003 (continued)

Division Three

**A101937 -- In re Michael W., a Person Coming Under the Juvenile Court Law. The People v. Michael W.**

Accordingly, the dispositional order in this matter is modified to include that the minor is entitled to 11 days' credit toward his maximum period of confinement. The court's order as modified is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A101088 -- The People v. Racardo Shevez Jackson.**

The judgment of conviction for possession of a firearm by a felon is reversed. The case is remanded to the trial court for resentencing. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A102521 -- The People v. Randall Blaine Pierce.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

**A098939 -- The People v. Gregory Geeter.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)



**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday November 20, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J.; Gemello, J.; and Richard H. Sandvik, Deputy Clerk.

A10092     Rash B. Ghosh

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v.

Shirley Dean as Mayor, et al.

Cause called and argued by Walter K. Pyle, counsel for appellant, and by Zach Cowan, counsel for respondent. Cause ordered submitted.

A10370     The People

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v.

Emiliano Zapata Loyola

Cause called and argued by David D. Martin, counsel for appellant, and by Lenk Morris, counsel for respondent. Cause ordered submitted.

A09900     Gary Arnold et al

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v.

Versa Products Inc. et al.

Cunningham Lindsey Claims /Management

Legion Insurance Company

Cause called and argued by Daniel U. Smith, counsel for appellant, and by Richard McKain McNeely, counsel for respondent. Cause ordered submitted.

A10279     Grafton Partners L.P. et al.

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v.

The Superior Court Of The County Of Alameda

Pricewaterhousecoopers

Cause called and argued by Jerome B. Falk, counsel for petitioners, and by Theodore J. Boutrous, counsel for respondent. Cause ordered submitted.

Justice Gemello leaves the bench and Justice Stevens enters.

A10405     In re Ashley M., a Person Coming Under the Juvenile Court Law  
4             Social Service Agency  
               v.  
               Ronnie Marina, et al.  
               Cause called and argued by Michael P. Murphy, counsel for appellant, and by Janet  
               G. Sherwood and Janet H. Saalfeld, counsel for respondent. Cause ordered  
               submitted.

Justice Simons leaves the bench and Justice Gemello enters.

A10064     MIC Property and Casualty Insurance Corporation  
8             v.  
               Universal Underwriters Insurance Group  
               Cause called and argued by Roy G. Weatherup, counsel for appellant, and by Ann  
               Marie Elston, counsel for respondent. Cause ordered submitted.

Court is recessed at 11:29 a.m.

Court reconvened at 1:00 p.m.

A10156    In re Jon G., a Person Coming Under the Juvenile Court Law  
8           Social Services Agency  
             v.  
             Jon G.  
             Cause called and argued by Gordon B. Scott, counsel for appellant, and by  
             Christina Vom Saal, counsel for respondent. Cause ordered submitted.

A10173    In re Jon G., a Person Coming Under the Juvenile Court Law  
5           Social Services Agency  
             v.  
             Jon G.  
             Cause called and argued by Gordon B. Scott, counsel for appellant, and by  
             Christina Vom Saal, counsel for respondent. Cause ordered submitted.

A10100    The People  
9           v.  
             Kevin Richard Foss  
             Cause called and argued by Thea Greenhalgh, counsel for appellant, and by Bryan  
             McCarroll, counsel for respondent. Cause ordered submitted.

Court is adjourned at 1:46 p.m.

Friday, November 21, 2003

Division One

**A101371 -- The People v. Larry L. August.**

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A102042 -- In re Mahogany B., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Antoinette B.**

The order denying appellant's section 388 petition is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A101181 -- In re Michael H., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Angel H.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A100547 -- The People v. Brian Peter Hagan.**

The case is remanded to the trial court for correction of the abstract of judgment and in all other respects is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Four

**A101491 -- Louis J. Hoffman v. The State Bar of California et al.**

The order denying Hoffman's petition for writ of mandate is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Certified for Publication.)

Friday, November 21, 2003 (continued)

Division Five

**A101359 -- The People v. Robert La Follett Lockwood.**

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

**A103415 -- The People v. Shawn Lamar Spikes.**

The order revoking appellant's probation and the sentence imposed are affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A102320 -- Storek & Storek, Inc., et al. v. The Superior Court of Alameda County; Citicorp Real Estate, Inc., et al. R.P.I.**

The Court: The opinion filed October 24, 2003, is ordered modified as follows: (See order.) There is no change in the judgment. Stevens, Acting P.J. (Not for Publication.)

Monday, November 24, 2003

Division One

**A101785 -- Vincent Balistreri v. Peter Rosenthal.**

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A100177 -- Statewide Cellular et al. v. Harry G. Brix.**

The appeal is dismissed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A098940 -- California Department of Fair Employment and Housing v. U.S. Foodservice, Inc., Julio Zamora, R.P.I.**

The judgment is reversed. Costs on appeal are awarded to appellant. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A101256 -- William Earls v. Michael McPherson and Karen McPherson.**

The judgment is affirmed. Defendant-respondents are awarded their costs on appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A099674 -- The People v. Joseph Kenneth Sorden.**

By the Court: Since this court's October 31, 2003 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Kline, P.J.

Monday, November 24, 2003 (continued)

Division Four

**A103018 -- The People v. George Curtis Cole.**

The judgment of conviction is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A102995 -- In re Terez M., a Person Coming Under the Juvenile Court Law. The People v. Terez M.**

The order is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Tuesday, November 25, 2003

Division One

**A102660 -- The People v. Mario A. Irias.**

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A101502 -- Iron & Silk, Inc. v. Champion Arts, Inc., et al.**

Accordingly, the judgment is reversed and the case is remanded to the trial court with directions to examine the allegations of the complaint in accordance with the views expressed herein to determine whether each cause of action is predicated upon a significant act in furtherance of the defendants' right of free speech in connection with an issue under consideration in the judicial action between the parties, even if those causes of action are also based in part on activity that is not so protected. If the court finds that for any cause of action defendant has met the threshold SLAPP requirement, the burden then shifts to plaintiff to establish that there is a probability of prevailing on the merits of the claim. Costs are awarded to defendants. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A102324 -- In re Ebony N., a Person Coming Under the Juvenile Court Law. The People v. Ebony N.**

The dispositional order is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A100189 -- The People v. Harece Sisk.**

The judgments are affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)



Tuesday, November 25, 2003 (continued)

Division Two

**A099803 -- The People v. Luis Antonio Hernandez.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J.  
(Not for Publication.)

**A099214, A101680 -- Mary Luzano v. Roger Mann et al.**

The judgment is affirmed. The trial court's order awarding costs to respondent is affirmed. Costs on appeal are awarded to respondent, Roger Mann, M.D. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A100365 -- The People v. James J. Smith, Jr.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A100035 -- In re David Z., a Person Coming Under the Juvenile Court Law. Mendocino County Department of Social Services v. Crystal C.**

The orders are affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J.  
(Not for Publication.)

Division Three

**A102092 -- David Aviel v. California State University, Hayward et al.**

The judgment is affirmed. Defendants are to recover their costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A101780 -- The People v. Javier Chavez.**

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Tuesday, November 25, 2003 (continued)

**A097435 -- John Garamendi, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; Scott Cade et al.**

The order, dated November 9, 2001, determining the amounts claimants are entitled to recover under Golden Eagle's policies is modified to determine that claimants are entitled to recover \$283,322.33 for property damage, \$540,000.00 for damages as assignees of Lyon, and \$139,415.44 for costs, for a total of \$962,737.77, plus interest at the legal rate from July 9, 1996. Claimants are not entitled to recover any damages for personal injury or for their attorney fees. In all other respects, the orders from which these appeals have been taken are affirmed. The parties shall bear their respective costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication.)

**A095527 -- The People v. Keelon T. Jenkins, et al.**

The judgments are affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A098796 -- Annette LeRoy et al. v. Borel Private Bank & Trust Company.**

**A099069 & A099464 -- Annette LeRoy et al v. Borel Private Bank & Trust Co., et al**

The trial court's judgment is reversed, and the matter is remanded with directions to the trial court to dismiss the approval action as moot. The appeal from the order denying injunctive relief is dismissed as moot. Parties to bear their own costs. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A102951 -- Adoption of Kowan M., a Minor. Billie Lou Malveaux et al. v. Francina W.**

The orders of the trial court are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A101742 -- The People v. Christopher Michael Parra.**

The judgment is affirmed. Corrigan, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Tuesday, November 25, 2003 (continued)

**A103039 -- The People v. Anthony Pinto.**

The judgment is vacated and the matter remanded to the superior court with directions to modify the conditions of probation consistent with this opinion. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A098028 -- The People v. Peter Quincy Rogers.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A101174 -- The People v. Ronald Leon Ussery.**

**A103895 -- In re Ronald Leon Ussery, on Habeas Corpus**

The judgment is affirmed, except that the abstract of judgment shall be corrected to reflect 650 days of credit for time spent in custody. Defendant's petition for writ of habeas corpus is denied. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A101065 -- In re Gina V., a Person Coming Under the Juvenile Court Law. The City and County of San Francisco Department of Human Services, Family and Children's Services Division v. Alfredo V.**

The order granting the modification petition is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A100627 -- Jim L. Woodson v. Legacy Partners 2323 L.P., et al.**

The judgment is reversed and the matter is remanded for further proceedings. Plaintiff is awarded costs on this appeal. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A101841 -- A.I. Credit Corp., Inc. v. Aguilar & Sebastinelli.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Certified for Publication.)

Tuesday, November 25, 2003 (continued)

**A100260 -- The People v. Jerome Earl Beck.**

**A100746 -- The People v. Brenton Duane Avery.**

The judgments of conviction are affirmed. Kay, P.J. We Concur:  
Sepulveda, J., Rivera, J. (Not for Publication.)

**A101264 -- The People v. Keith Robert Langer.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda,  
J. (Not for Publication.)

**A102501 -- In re Marriage of Xiao Ling Lu and Victor Tu.**

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J.  
(Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, November 25, 2003

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kay, P.J., Reardon, J., and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officers Arnold Stamps and Joe Fraiser, Bailiffs.

- A102648     Larry Richards  
              v.  
              Jonathan Dyer  
Cause called. Appellant Jonathan Dyer argued on his own behalf. Respondent Larry Richards argued on his own behalf. Cause submitted.
- A099418     Sandra J. Patterson  
              v.  
              Slakey Brothers, Inc.  
Cause called. Katherine Wang argued for appellant Patterson. Steven Clarence argued for respondent. Cause submitted.
- A099831     Sandra J. Patterson  
              v.  
              Keenan Properties, Inc.  
Cause called. Katherine Wang argued for appellant Patterson. Eugene Brown, Jr. argued for respondent. Cause submitted.
- A101092     James Schultz  
              v.  
              Suzanne Ramirez  
Cause called. Craig Gross argued for appellant Ramirez via telephone. Respondent did not appear. Cause submitted.
- A099837     Roger Wets et al.  
              v.  
              Derwin Alan Cox  
Cause called. Jeffrey Miller argued for appellant Cox via telephone. Tyler Meade argued for respondent. Cause submitted.

The court adjourned at 10:33 a.m.

Tuesday, November 25, 2003 (continued)

Division Five

**A100648 -- MIC property and Casualty Insurance Corporation v.  
Universal Underwriters Insurance Group.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J.  
(Not for Publication.)

Wednesday, November 26, 2003

Division One

**A101779 -- The People v. Vernon Burly Clark.**

The judgment is modified to strike one year from the determinate portion of appellant's sentence and to grant him 128 days' total presentence credit. As modified, the judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A101717 -- The People v. Rodney Wayne Conatser.**

The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A099469 -- The People v. Patrick Goodman.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A099589 -- Kristina Joseph v. Timothy C. Howard.**

The order denying the petition to compel is reversed. The cause is remanded to the trial court with instructions to grant to the petition to compel arbitration. Each party shall bear their own costs of this appeal. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A101093 -- The People v. Joel Sanchez Perez.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, November 26, 2003 (continued)

Division Three

**A098625 -- Conservatorship of the Estate of Dolores Davidson.**

The judgment is affirmed. Appellant shall pay respondent's costs on appeal. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Certified for Publication.)

**A098629 -- The People v. Darryl Anthony Gibson.**

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A100928 -- The People v. Georgetta Tranquility Hudson.**

The order denying reimbursement for foodstamp overpayment is reversed. The case is remanded for further proceedings to determine the appropriate amount of restitution. The parties shall bear their own costs. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Certified for Publication.)

**A101973 -- The People v. David Lee Owens.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A098127 -- The People v. Ruben James Puga.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A100108 -- John Purcell et al. v. Guinness UDV North America, Inc.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)



Wednesday, November 26, 2003 (continued)

**A103288 -- The People v. Oscar Rivas.**

The order revoking appellant's probation and the sentence imposed are affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A102648 -- Larry Richards v. Jonathan Dyer.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

**A098044, A098587 -- David Taylor et al. v. John Crane Inc.**

The judgment is affirmed. The parties shall bear their own costs on appeal. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Certified for Partial Publication.)

**A102615 -- The People v. Justin Charles Vick.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

**A097743 -- The People v. Efrain Vasquez Huerta.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Wednesday, November 26, 2003 (continued)

**A102473 -- Abinadab Israel et al. v. Bill Manuel Fernandez et al.**

The order enforcing the settlement is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A099761 -- Anthony Johnisee et al. v. Kimberlite Corporation.**

The judgment is reversed and remanded with directions to award respondents all “first-half” commissions, as that phrase is used in this opinion, to which they were entitled on the dates of their terminations, to adjust the interest on their awards accordingly, and to redetermine waiting-time penalties based on monthly salary and nonpayment of “first-half” commissions only, but not bonuses. It is also directed to determine whether Kimberlite was unsuccessful in its appeal from the Labor Commissioner’s award, pursuant to section 98.2, subdivision (c) and the holding of *Smith v. Rae-Venter Law Group, supra*, 29 Cal.4th 345, and, if so, determine and award respondents reasonable attorney fees. In all other respects the judgment is affirmed. Parties to bear their own costs. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A099376 -- The People v. Vernon David Welch.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)